IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.418 OF 2006
IN
SUIT NO.1355 OF 1982

Manish Morarji Palan & Ors. ... Plaintiffs

Vs.

Gordhandas Rajmi Palan & Ors. ... Defendants

Ms. Mili V. Thakkar i/b Mr. R.V. Thakkar for the plaintiffs.

Mr. Vishwanath S. Talkute for defendants 1(d)(i) to 1(d)(iii) and 1(f).

Mr. Narendra Jain i/b S.K. Jain for defendant 2.

Mr. Narendra L. Gada for defendant 4.

Mr. D.V. Deokar, 1st Assistant to the Court Receiver, present.

CORAM : SMT. RANJANA DESAI, J.

DATED : OCTOBER 25, 2007.

P.C.:-

1. The plaintiffs have taken out this notice of motion for the following reliefs:

> "a. Pending the hearing and final disposal of the suit, this Hon'ble Court may direct to Court

Receiver, High Court, Bombay to take possession of Shop bearing No.10 situated at Ground Floor, Anant Deep Chambers, 273/77, Narshi Natha Street, Mumbai – 400 009, since the Respondents No.4 / Agent of Court Receiver committed default of making payment of their regular royalty and also non-execution of Agency Agreement with Court Receiver and filing the undertaking to this Hon'ble Court.

b. That this Hon'ble Court may pass any such order or appropriate orders / directions directing the occupying agent i.e. Respondent No.4 to vacate the premises which is under the possession of the Court Receiver, High Court, Bombay.

c. That this Hon'ble Court may direct the Court Receiver, High Court, Bombay to terminate the Agency Agreement and possess the said Agent i.e. Respondent No.4 and hand over vacant possession of the shop."

2. I have heard learned counsel appearing for the plaintiffs and learned counsel appearing for the newly added party i.e. respondent 4, who is the agent of the Court Receiver and learned counsel appearing for the defendants.

3. It is not necessary for me to go into the rival contentions

because without prejudice to their rights and contentions, the parties have mutually agreed upon the following arrangement.

4. Respondent 4 - M/s. Vijay Stores shall continue to be the agent of the Court Receiver in respect of the suit premises. Respondent 4 shall execute agency agreement within one month from today. Needless to say that within one month from today, respondent 4 shall also give necessary undertaking. The royalty for the suit premises is fixed at Rs.20,000/- per month. In addition, respondent 4 shall also pay the society charges. The amount of royalty shall be paid by respondent 4 by 10th of each succeeding month.

5. My attention has been drawn by learned counsel for respondent 4 to the order dated 5/7/1995 passed by Justice Smt. Baam. Needless to say that this order is not disturbed by the present order. The representative of the Court Receiver states that respondent 4 is in arrears of society charges to the tune of Rs.20,516/- upto September, 2007. Respondent 4 has already

deposited a cheque in the sum of Rs.18,900/- with the Court Receiver. The Court Receiver shall be free to deposit the said cheque in the suit account. Remaining arrears shall be paid by respondent 4 within two weeks from today. It is clarified that if respondent 4 makes any single default in paying the royalty amount, the agency agreement shall stand cancelled. As per the procedure, respondent 4 will have to deposit three months' advance royalty, which he shall do within one month.

6. Just to guide me, I wanted the property to be valued. Accordingly, I asked for a valuer's report. Pursuant to my order, the valuer has submitted his report dated 9/10/2007. It was argued by learned counsel for respondent 4 that the valuer' sreport does not depict correct valuation. However, in view of the above arrangement arrived at by the parties, without prejudice to their rights and contentions, it is not necessary to deal with those objections. I make it clear that I have not expressed any opinion on those objections. If the Court Receiver has taken any amount out of the suit account for payment of society charges or any other

incidental charges in connection with the suit premises, the same may be recovered from respondent 4. The differential amount in respect of the earlier royalty should also be deposited by respondent 4. No further order is necessary on this notice of motion. Notice of motion is disposed of.

7. In the peculiar facts and circumstances of the case, the suit is expedited.

[SMT. RANJANA DESAI, J.]